

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.



/S/ RUSS KENDIG

Russ Kendig
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 11
)	
JOSEPH J. DETWEILER,)	CASE NO. 09-63377
)	
Debtor.)	ADV. NO. 09-6118
)	
SEQUATCHIE MOUNTAIN)	JUDGE RUSS KENDIG
CREDITORS,)	
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OF OPINION
)	(NOT INTENDED FOR
JOSEPH J. DETWEILER,)	PUBLICATION)
)	
Defendant.)	
)	

On July 6, 2011, the court awarded Defendant's counsel reasonable expenses related to a motion to compel filed on March 18, 2011. Defendant submitted an itemized statement, to which Plaintiffs objected. The court now determines the actual amount of the award.

The court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on July 16, 1984. Venue in this district and division is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the Court.

The court will not reiterate the facts leading to the fee award. What is before the court is an itemization of fees totaling \$4,735.05, which the court finds patently unreasonable. As Plaintiffs point out, some of the work itemized concerns general litigation and much of the itemized time is for work done after the motion and order to compel were entered. All time related to discovery or the case is not recoverable. Only time related to the motion to compel is recoverable. It is unclear how most of the entries pass this requirement.

The motion to compel was a straight-forward, five page motion. Plaintiffs did not object to the motion and no hearing was required. A review of the itemization shows approximately ten entries specifically reference the motion to compel. These are condensed as follows:

03/17/2011	SRW	.40	\$ 72.00
03/17/2011	SRW	.30	\$ 54.00
03/17/2011	SRW	.50	\$ 90.00
03/17/2011	SRW	.40	\$ 72.00
03/18/2011	SJA	.30	\$ 34.50
04/11/2011	MHP	.30	\$ 34.50
04/11/2011	MHP	.40	\$ 46.00
04/12/2011	SMZ	.50	\$100.00
04/20/2011	MHP	.20	\$ 23.00
04/28/2011	SMZ	<u>.20</u>	<u>\$ 40.00</u>
		3.50	\$566.00

Upon review of the itemization, it appears that \$322.50 was charged for the motion and \$243.50 for the order. Since the order to compel was entered on April 20, 2011, the court finds the last entry was not reasonably related to the work expended on the motion or order to compel. The first entry entered on April 11, 2011 appears to charge for internal office communications, which the court will disregard. Therefore, an award of \$491.50 is reasonable.

In the objection to the itemization of fees, Plaintiff's counsel argues that it is unjust to require counsel to pay fees for two reasons. First, counsel had no control over the timeliness of the responses once the discovery sent to plaintiffs. Second, because of the number of plaintiffs, discovery was voluminous and a presenting "daunting" challenge. Part of client representation is the ability to manage both clients and the case. There is no unjustness in awarding fees for failing to abide by the federal rules of discovery, especially in this case. Discovery was served on April 1, 2010 and the motion to compel was filed on March 18, 2011. Plaintiffs never sought leave for additional time to respond to the requests.

Plaintiffs' objection to the fees will be sustained, in part. An order will be issued contemporaneously with this decision.

#

Service List:

Peter G. Tsarnas
Goldman & Rosen, Ltd.
11 South Forge Street
Akron, OH 44304

Scott M Zurakowski
PO Box 36963
4775 Munson St NW
Canton, OH 44735-6963

Anthony J DeGirolamo
116 Cleveland Ave., N.W.
Suite 307
Canton, OH 44702